IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
Second Application No.162/2006

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	**Court's or Judge's Orders.**

CORAM : **A.P. Lavande, J**
DATE : 20.4.2007

Heard Mr. K.S.Narwade, learned counsel for the appellant and Mr. R.G. Shinde, learned counsel for the respondent caveator.

This second appeal is directed against the Judgment and decree dated 6.8.2005 passed by the Second Ad hoc Additional District Judge, Pusad in Regular Civil Appeal No. 41/02 dismissing the appeal filed against the Judgment and decree dated 10.10.2002 passed in Regular Civil Suit No. 13/01 passed by the Civil Judge, Jr. Dn., Mahagaon. The appellant is the original plaintiff in the above suit who filed the above suit for specific performance of agreement dated 2nd July, 1999 entered into between the appellant- plaintiff and the respondent-defendant in respect of the suit field. According to the plaintiff, the defendant had agreed to sell the suit field for total consideration of Rs.70,000/- out of which the earnest amount of Rs. 7000/- was paid to the defendant. The trial court upon appreciation of the evidence led by the parties held that the plaintiff had forcibly taken signatures of the defendant on blank stamp paper. The trial

court further held that the defendant was entitled to mesne profits under Order 20 Rule 12 of the Code of Civil Procedure.

Being aggrieved by the decree the plaintiff preferred the appeal to the District Court. The Additional District Judge by the impugned Judgment dismissed the appeal holding that the plaintiff had proved the agreement dated 2.7.1999 but the plaintiff had failed to prove that the amount of Rs. 7000/- was paid by him to the defendant. The lower appellate Court also recorded a finding that the plaintiff had failed to prove that he was ready and willing to perform his part of the contract. The lower appellate Court further held that the balance of hardship was in favour of the defendant respondent. Consequently, the lower appellate Court dismissed the appeal preferred by the appellant.

Mr. Narwade, submitted that the findings recorded by both the courts below against the plaintiff are contrary to the evidence on record. He further urged that the lower appellate Court having held that the plaintiff had proved the agreement dated 2.7.1999 in respect of the suit property ought to have granted decree of specific performance in favour of the plaintiff. He further urged that the lower appellate court erred in holding that the balance of hardship was in favour of the defendant – respondent.

Per contra, Mr. Shinde supported the findings recorded by the lower appellate court.

I have considered the submissions made by the

parties and perused the record. Admittedly, the plaintiff is a husband of the defendant. Therefore, the findings recorded by the lower appellate court that the hardship would be caused to the defendant in case the decree for specific performance was granted cannot be said to be perverse. It is settled law that the grant of specific performance of contract is discretionary and the court is entitled to refuse the relief of specific performance if the party against whom specific performance is claimed is going to suffer more hardship. Having perused the record and having considered the submissions made by the parties, I find that the findings given by the lower appellate Court against the plaintiff are borne out from the evidence on record and cannot be said to be perverse warranting interference in Second Appeal. In any case, no substantial question of law is involved in the appeal. Hence, the appeal is summarily dismissed.

C.A.No.2050/2006

In view of the dismissal of the second appeal, nothing survives in this application. Hence, the application is dismissed as infructuous.

Judge

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